

Settlement Agreement

This Settlement Agreement (“Agreement”) is entered into among the following parties (collectively referred to as the “Parties”): the District of Columbia (the “District”), acting through its Office of the Attorney General; Forrester Construction Company (“FCC”); EEC of DC, Inc./Forrester Construction, Anacostia Senior High School Project Joint Venture (“Anacostia Joint Venture”); EEC of DC, Inc./Forrester Construction (New DOES Headquarters) Joint Venture; and EEC of DC, Inc./Forrester Construction (Ward I Senior Wellness Center Joint Venture) (joint ventures collectively referred to as the “JV Parties”).

Preamble

A. WHEREAS, the District is a municipal corporation created by an Act of Congress and is the local government for the district constituting the seat of government of the United States.

B. WHEREAS, FCC is a Maryland corporation headquartered in Rockville, Maryland.

C. WHEREAS, the District contends that the JV Parties improperly obtained District construction contracts through the District’s certified business enterprise program and/or its predecessor, the District’s local, small, and disadvantaged business enterprise program (jointly, the “CBE Program”), programs providing contracting preferences to certified business enterprises, which include local business enterprises, small business enterprises, disadvantaged business enterprises, resident-owned business enterprises, longtime resident business enterprises, and local business enterprises with principal offices located in an enterprise zone, under D.C. Code § 2-218.13. The District contends that FCC used joint venture agreements with EEC of

DC, Inc. (“EEC”), a certified business enterprise company, to benefit from EEC’s contracting preferences and thereby obtain the following three District construction contracts: a contract for construction of a new headquarters building for the Department of Employment Services headquarters, a contract for construction of a Senior Wellness Center in Ward 1, and a contract for the renovation and modernization of the existing Anacostia Senior High School. The District contends that each joint venture agreement, which was submitted to the District, stated that EEC was the majority and controlling partner, would do a majority of the joint venture work, and was entitled to the majority of the joint venture’s profits. Relying on these statements, the District contends that it certified the joint venture agreements, gave the joint ventures the maximum possible contracting preferences, and ultimately awarded a District construction contract to each joint venture. FCC and EEC, however, entered into agreements – which were not disclosed to the District during the procurement process – that the District contends effectively changed the terms of the joint venture agreements to provide that FCC would be the controlling joint venture partner, would do a majority of the joint venture work, and could potentially receive a substantial majority of the joint venture-related profits. Each joint venture later submitted claims to the District for contract payments and represented in these claims, expressly or by implication, that the contract work had been performed in accordance with the joint venture agreements that the joint ventures had submitted to the District. The foregoing conduct in this paragraph is hereinafter referred to as the “Covered Conduct.” FCC and the JV Parties dispute any contention that they acted improperly.

D. WHEREAS, the Anacostia Joint Venture has presented the District with Pay Application Nos. 29 and 30 (together the “Pay Application”) for a total of \$3,282,998 (three million, two hundred eighty-two thousand, nine hundred ninety-eight dollars) for work that the

Anacostia Joint Venture has performed under the Modernization of Anacostia Senior High School, Contract No. GM-09-M-0511-FM, inclusive of the Construction Management Agreement for Anacostia Senior High School by and between the District and the Anacostia Joint Venture made as of January 4, 2010 (the "Contract").

E. WHEREAS, this Agreement is neither an admission of liability by FCC or the JV Parties, which liability is expressly denied by them, nor a concession by the District that its claims are not well-founded.

F. WHEREAS, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

Terms and Conditions

1. Payment. Within fourteen days of the effective date of this Agreement, the District agrees to pay to FCC, and FCC agrees to accept, a discounted amount of \$2,282,998 (two million, two hundred eighty-two thousand, nine hundred ninety-eight dollars) ("Discounted Amount") in full satisfaction of the amount owed by the District for the base contract work (inclusive of Change Orders 1 through 26) described in the Pay Application; expressly excluding the work described in Change Orders 27 and 28 that have been submitted to the District's Department of General Services for approval and payment. FCC agrees that all subcontractors that performed work under the base contract (inclusive of Change Orders 1 through 26), have been or will be paid by FCC or the Anacostia Joint Venture for such base contract work (inclusive of Change Orders 1 through 26), without deducting from any subcontractor payment any portion of (i) the difference between the amount invoiced for the base contract work (inclusive of Change Orders 1 through 26) described in the Pay Application and (ii) the

Discounted Amount. Moreover, FCC agrees that subcontractors have been or will be paid by FCC or the Anacostia Joint Venture a total of not less than \$2,282,998 (two million, two hundred eighty-two thousand, nine hundred ninety-eight dollars) for work covered by the Pay Application. The Parties agree that the District's rights under subsections 4.3.9, 4.3.12, 8.6, and 8.7 of the Contract are not affected by the terms of this Settlement Agreement.

2. CBE Program Preference Points. FCC confirms that it will not seek preference points or price reductions under the District's CBE Program before November 1, 2015.

3. Release by the District. Subject to the exceptions in paragraph 5 below and conditioned upon compliance with paragraph 1, the District, on behalf of itself and all of its agencies and subdivisions, releases FCC and the JV Parties, and each of them, and their respective officers, agents, insurers, sureties, employees, successors, assigns, and stockholders, from any civil, administrative, or regulatory claims that the District has or may have against FCC or the JV Parties based on actions or omissions of FCC or the JV Parties relating to, arising from, or otherwise concerning participation by FCC or the JV Parties in the Covered Conduct, including claims under D.C. Code § 2-381.01 *et seq.*, 18 U.S.C. §§ 1962(c) & 1962(d), and other statutes or common law and any other claims at law or in equity. The District does not release claims relating to Change Orders 27 and 28 under the Contract, or arising under any warranty owed by FCC or the JV Parties, or latent defect claims.

4. Release by the JV Parties. Subject to the exceptions in paragraph 5 below and conditioned upon compliance with paragraph 1, FCC and the JV Parties release the District and its agencies and subdivisions, and its officials, agents and employees, from any claims that FCC and the JV Parties have against the District and its agencies and subdivisions, and its officials, agents and employees (i) in any way related to the District's investigation of the Covered

Conduct, or (ii) provided that the payment described in Paragraph 1 is timely made, for any payment due from the District for base contract work (including Change Orders 1 through 26) under the Contract. FCC and the JV Parties do not release any contract claims relating to Change Orders 27 and 28 under the Contract.

5. Non-Released Claims. Notwithstanding any term of this Agreement, the District specifically does not release FCC and the JV Parties from claims belonging to the federal government under federal law, from claims under the criminal laws of the District or the United States of America, or from claims or liability under the District's tax laws. The District specifically does not release FCC and the JV Parties, and FCC and the JV Parties specifically do not release the District, from any claims based upon obligations created by this Agreement, including claims to enforce the terms and conditions of this Agreement.

6. Permanent and Binding Resolution. This Agreement is a permanent and binding accord and resolution of the rights and obligations of the Parties with respect to all matters that are the subject of this Agreement.

7. Parties Bear Their Own Costs. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

8. Warranties. The District signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement and bind the District. The individual(s) signing this Agreement on behalf of FCC and the JV Parties represent that they are authorized to execute this Agreement and bind FCC and the JV Parties.

9. Entire Agreement. Except as explicitly set forth in this Agreement, there are no representations, warranties, or inducements, whether oral, written, expressed, or implied, that in

any way affect or condition the validity of this Agreement or any of its conditions or terms. This Agreement represents the complete agreement between the Parties. All prior negotiations, including oral or written agreements, are merged in this Agreement.

10. Authorship. This Agreement reflects the joint drafting efforts of all of the Parties. In the event any dispute, disagreement, or controversy arises regarding this Agreement, the Parties shall be considered joint authors, and no provision shall be interpreted against any Party because of authorship. Each Party is fully informed as to the meaning and intent of this Agreement.

11. Execution. This Agreement may be executed in counterparts, each of which constitutes an original and all of which together constitute one and the same agreement.

12. Amendment. This Agreement may not be amended or modified except by a written instrument signed by the duly authorized representatives of the Parties.

13. Severability and Governing Law. If any provision of this Agreement, with the exception of the provisions for payment and release, is found to be invalid, unenforceable, or void for any reason, such provision shall be severed from the Agreement and shall not affect the validity or enforceability of the remaining provisions. This Agreement shall be interpreted, enforced, and governed by the laws of the District of Columbia. The exclusive jurisdiction and venue for any dispute arising between or among the Parties under this Agreement will be the Superior Court for the District of Columbia and the District of Columbia Court of Appeals. As regards disputes, if any, that arise under, or relate to, the Contract, the Parties reserve their respective positions as regards the binding effect of the disputes resolution procedures contained in the Contract Documents applicable to that Contract.

14. Effective Date. This Agreement is effective as of May 8, 2013.

15. Successors and Assigns. This Agreement shall be binding upon the Parties, their successors, transferees, heirs, and assigns.

16. No Transfer. FCC and the JV Parties represent that they have not transferred or assigned to any person or entity any claim against the District.

17. No Third-Party Beneficiaries. No person or entity other than the Parties or permitted assignees may assert any claim or right as a third-party beneficiary or protected person under this Agreement in any civil, criminal, or administrative action.

18. No Precedential Effect. The Parties agree that this Agreement is completely void of any precedential value or effect whatsoever. The Parties also agree that this Agreement was entered into based upon the particular facts and circumstances of this matter. This Agreement shall not be cited by any Party to this Agreement as a basis for relief in any other judicial proceeding, contractual appeal, or administrative procedure, other than in connection with efforts to enforce the terms of this Agreement.

For the District of Columbia:

IRVIN B. NATHAN
Attorney General for the District of Columbia

ELLEN A. EFROS
Deputy Attorney General, Public Interest Division

May 8, 2013
Date

By:

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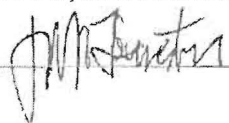
For the JV Parties and FCC:

EEC of DC, Inc./Forrester Construction, Anacostia Senior High School Project Joint Venture

By: 

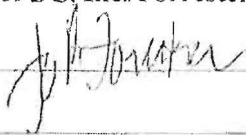
Dated: 5/8/13

EEC of DC, Inc./Forrester Construction (New DOES Headquarters) Joint Venture

By: 


Dated: 5/8/13

EEC of DC, Inc./Forrester Construction (Ward I Senior Wellness Center Joint Venture)

By: 

Dated: 5/8/13

Forrester Construction Company

By: 
Its President

Dated: 5/8/13